

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

OCCIDENTAL CHEMICAL
CORPORATION,

Plaintiff,

vs.

21ST CENTURY FOX AMERICA, INC., et
al.,

Defendants.

Civil Action No. 18-11273 (MCA)(JD)

**ORDER OF THE SPECIAL MASTER
REGARDING ELECTRONICALLY
STORED INFORMATION**

WHEREAS, the Special Master held a monthly conference with the parties on February 12, 2020 (“February Conference”) to discuss issues related to discovery; and

WHEREAS, over the course of several prior monthly conferences, the parties have raised numerous issues related to the production of Electronically Stored Information (“ESI”), which has yet to commence; and

WHEREAS, Plaintiff has requested that Defendants immediately begin producing ESI; and

WHEREAS, the Small Parties Group and numerous additional Defendants have proposed that the parties reach an agreement regarding search terms and custodians before any ESI searches are commenced; and

WHEREAS, in furtherance of that position, on or about December 19, 2019, the Small Parties Group proposed a list of common search terms (“Common Terms”) to be used by Defendants in searching for ESI responsive to Plaintiff’s discovery demands; and

WHEREAS, several other Defendants have expressed that the Common Terms need to be modified for most individual Defendants to provide appropriate and complete ESI search results;

and

WHEREAS, another issue in dispute among the parties is the scope of relevant ESI discovery, and in particular, whether ESI should be limited to documents and other information that references the eight (8) chemicals of concern (“COCs”); and

WHEREAS, in connection with this dispute, Plaintiff has proposed a list of more than 1,200 chemicals (“Chemical List”) that, while not meant to be treated as search terms, Plaintiff argues are relevant to this matter; and

WHEREAS, Defendants have objected to Plaintiff’s Chemical List as being irrelevant and overbroad; and

WHEREAS, during the February Conference, the Special Master determined that based on the months of discussions related to ESI, pre-negotiation and agreement of all issues related to ESI will result in unnecessary delay and complication; and

WHEREAS, the Special Master determined that, in accordance with a lengthy discussion and the terms of this Order, ESI searches must commence to ensure that discovery in this matter continues to progress; and

IT IS on this 18th day of February 2020,

ORDERED that Plaintiff shall file a motion (“Chemical List Motion”), in accordance with the briefing schedule set forth below, regarding the relevancy of the chemicals listed on the Chemical List:

1. Plaintiff shall file the Chemical List Motion on or before February 21, 2020;
2. Any Defendant shall file opposition to the Chemical List Motion on or before March 2, 2020;
3. Plaintiff shall file a reply brief on or before March 5, 2020; and
4. The Special Master shall conduct a hearing on the Chemical List Motion on March

11, 2020, at the monthly conference; and it is further

ORDERED that all parties possessing ESI shall commence searches of ESI by no later than April 1, 2020, in accordance with the following:

1. Defendants shall either adopt the Common Terms proposed by the Small Parties Group; or modify the Common Terms in a good faith attempt to ensure their individual ESI production complies with all applicable requirements.
2. Defendants may seek to negotiate modified Common Terms and custodian lists with Plaintiff in advance of searching ESI in an effort to reach an agreement. As is always required, parties shall negotiate in good faith and make every effort to timely respond to each other. If no agreement is reached by April 1, 2020, the parties reserve all rights to challenge and defend any modified Common Terms and custodian lists following the production of documents. In reviewing such challenges and defenses, the Special Master will consider the efforts made prior to April 1, 2020 to come to an agreement.
3. All parties shall provide a complete list of search terms and custodians utilized in their ESI searches when their production is made.
4. The parties have leave to directly communicate with the Special Master related to ESI and negotiations of search terms and custodians.
5. Nothing in this Order shall restrict the ability of any party to make additional inquiries regarding the amount and scope of ESI in a party's possession or the manner in which ESI searches were conducted.

/s/ Thomas P. Scrivo
THOMAS P. SCRIVO
Special Master